

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 1:06cr107-MHT
	)	
MICHAEL D. HARVEY	)	

UNOPPOSED MOTION FOR MENTAL COMPETENCY EXAMINATION

Comes now the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and respectfully renews its Motion For Mental Competency Examination and requests that this Court enter an order directing the United States Marshal for the Middle District of Alabama to take the above-named defendant into custody and to remove him to the custody of the Warden of the Medical Center for Federal Prisoners, Butner, North Carolina, or such other facility designated by the Federal Bureau of Prisons, or such other federal institution as the Court deems appropriate, for the purpose of being observed and examined by one or more qualified psychiatrists or psychologists, pursuant to 18 U.S.C. §§ 4241, 4242(a) and 4247.

In support of its motion, the United States respectfully states as follows:

1. On June 28, 2006, Mr. Harvey's defense counsel notified the United States that he intended to seek suppression of Harvey's rights advised statement wherein he admitted to the charges listed in the indictment. According to defense counsel, a private preliminary psychological report raises serious concerns about Defendant's mental status at the time of the offense, his mental status at the time of his confession, and perhaps his current mental condition.

2. Although defense counsel has not filed notice under Rule 12.2 of the Federal Rules of Criminal Procedure, i.e., that the defendant intends to rely on the defense of insanity or mental defect, the United States agrees that a psychiatric or psychological report may indeed serve judicial

economy and assist the United States in achieving the due administration of justice.

3. Accordingly, the United States files the instant motion pursuant to 18 U.S.C. §§ 4241 and 4242(a). Section 4242(a) provides as follows:

**Motion for pretrial psychiatric or psychological examination.**—Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

18 U.S.C. § 4242(a).<sup>1</sup>

4. Title 18, United States Code, Section 4247, sets forth, in relevant part, that:

A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court....For the purposes of an examination pursuant to an order...under section 4242, 4243, or 4246, [the court may commit the person to be examined] for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility.

18 U.S.C. § 4247(b).

Accordingly, the United States respectfully requests that a psychiatric or psychological examination of the defendant be conducted, pursuant to 18 U.S.C. § 4247(b), and that a psychiatric or psychological report be prepared, pursuant to 18 U.S.C. § 4247(c), said report specifically to include a determination as to “whether the person [defendant] was insane at the time of the offense[s] charged.” 18 U.S.C. § 4247(c)(4)(B). The report should also include a determination as

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<sup>1</sup>Based upon the representation to the undersigned AUSA by counsel for defendant, the United States understands Defendant’s contention to be that defendant was mentally incompetent at the time of his rights advised statement to law enforcement. Consequently, the United States also files the instant motion pursuant to the provisions set forth in 18 U.S.C. § 4241(a). The United States specifically seeks a determination of Harvey’s ability to knowingly and voluntarily waive his rights under Miranda and make any statement to law enforcement.

to the type, source, and/or cause of the mental defect or deficiency.

To the extent that Defendant also raises the issue of his competency to make a voluntary statement to law enforcement and/or stand trial, the United States respectfully requests that said report include a determination as to “whether the person [defendant] is suffering [or has previously suffered] from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him [or knowingly and voluntarily waive his rights under Miranda] or to assist properly in his defense.” 18 U.S.C. § 4247(c)(4)(A).

For the foregoing reasons, the United States respectfully requests that this Court enter an order, pursuant to 18 U.S.C. §§ 4242 and 4247, directing that the United States Marshal for the Middle District of Alabama take the defendant into custody and that the defendant be placed in a suitable facility for the purposes of being observed and examined, for a reasonable period of time, not to exceed forty-five days from the date of defendant’s arrival at the designated facility.

Respectfully submitted this the 7th day of July, 2006.

LEURA G. CANARY  
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Kevin Butler.

Respectfully submitted,

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